Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications	)	GN Docket No. 94-90

To: The Commission

COMMENTS OF BELLSOUTH

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
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BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Wireless, Inc., and Mobile Communications Corporation of America (collectively "BellSouth") hereby submit their comments in support of the Commission's proposal to eliminate the restriction on wireline eligibility in the specialized mobile radio ("SMR") services contained in Section 90.603 and Section 90.703 of its rules and to remove the prohibition on the provision of dispatch service by common carriers. [1]

SUMMARY

For more than twenty years, the Commission has been trying to rationalize the wireline ineligibility rules. As each basis provided for these rules has eroded, the

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[1] *Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Notice of Proposed Rule Making*, FCC 94-202 (Aug. 11, 1994), 59 Fed. Reg. 42563 (1994) ("*Second NPRM*"). Sections 90.603 and 90.703 exclude "wire line telephone common carriers" from eligibility to hold SMR licenses in various bands. *See* 47 C.F.R. §§ 90.603(c), 90.703(c). Section 332 of the Communications Act prohibits the provision of dispatch service by common carriers unless the Commission determines that elimination of the prohibition serves the public interest. 47 U.S.C. § 332 (c)(2).

Commission now proposes to eliminate these restrictions as unnecessary. BellSouth supports elimination of the rules because:

- No basis for the rule remains;
- Congress has mandated regulatory parity which in turn requires consistent licensing schemes;
- The marketplace, and not Commission regulation, should shape SMR development; and
- Removal of the restriction will promote investment in and the transfer of expertise by wirelines to SMR licenses which will speed innovation and enhance competition.

Moreover, BellSouth supports elimination of the prohibition on the provision of dispatch service by common carriers. Because SMR providers are characterized as CMRS providers and are capable of providing dispatch service, regulatory parity requires that all CMRS providers be allowed to provide dispatch service. Further, elimination of the dispatch prohibition will enhance competition by ensuring a variety of service providers.

INTRODUCTION

In 1974, the Commission created the SMR service and adopted rules governing the licensing of this new service.[2] For purposes of determining eligibility for SMR licenses, the Commission adopted what is now Section 90.603 which excludes "wire line telephone common carriers" from eligibility. [3] No rationale was provided, however, for excluding wirelines from the SMR service.

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2 *Land Mobile Radio Service*, Docket No. 18262, *Second Report and Order*, 46 FCC 2d 752 (1974), *recon.*, 51 FCC 2d 945, *clarified*, 55 FCC 2d 771 (1975), *aff'd sub nom. NARUC v. FCC*, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

3 *Second Report and Order*, Appendix B, 46 FCC 2d at 787; *see* 47 C.F.R. § 90.603(c).

In 1986, the Commission proposed to eliminate the wireline ineligibility rule because it had become "unnecessary" and elimination of the rule would increase competition.[4] Many parties supported elimination of the rule and one commenter expressed its concern that action on removal of the prohibition would be deferred until after additional SMR spectrum has been allocated in other proceedings.[5] As predicted, the Commission conducted numerous SMR rulemakings in rapid succession which incorporated the wireline eligibility restriction.[6] The Commission's failure to act expeditiously locked wireline telephone companies out of these new services.

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4 *Eligibility for the Specialized Mobile Radio Services*, PR Docket No. 86-3, *Notice of Proposed Rule Making*, 51 Fed. Reg. 2910, 2911 (1986) ("*First NPRM*"), *proceeding terminated*, 7 FCC Rcd. 4398 (1992). BellSouth notes that there appears to be no difference between the FCC's position in 1986 and its current position regarding elimination of the rule.

5 Comments of NYNEX Mobile Communications Company, PR Docket 86-3, filed May 19, 1986, at 2-3.

6 *See, e.g., 900 MHz Reserve Band*, GEN. Dockets 84-1231, 84-1233, 84-1234, *Report and Order*, 2 FCC Rcd. 1825 (1986) (authorizing 900 MHz SMR systems)(subsequent history omitted); *Subparts M and S*, PR Docket 86-404, *Report and Order*, 3 FCC Rcd. 1838 (1988) (reallotting many 800 MHz frequencies for SMR use and authorizing service to individuals by SMRs), *recon. denied, Order clarified*, 4 FCC Rcd. 356 (1989); *Fleet Call, Inc.*, 6 FCC Rcd. 1533 (1991) (authorizing "enhanced" SMR service); *220 MHz Private Land Mobile Services*, PR Docket No. 89-552, *Report and Order*, 6 FCC Rcd. 2356 (1991) (authorizing 220 MHz SMR systems), *recon. granted in part, denied in part*, 7 FCC Rcd. 4484 (1992); *SMR Co-Channel Short Spacing*, PR Docket No. 90-34, *Report and Order*, 6 FCC Rcd. 4929 (1991) (adopting short spacing rules for SMRs); *Elimination of SMR End User Licensing*, PR Docket No. 92-79, *Report and Order*, 7 FCC Rcd. 5558 (1992) (eliminating end user SMR licenses).

Five years after it stated that elimination of the rule was necessary to increase competition and stated that there were no significant alternatives to eliminating the rule,[7] the Commission terminated the proceeding to eliminate the rule. [8]

Shortly thereafter, BellSouth filed a Petition for Review with the D.C. Circuit.[9] The appeal was held in abeyance, however, pending resolution of Petitions for Reconsideration which were filed by Southwestern Bell Corporation and Bell Atlantic Enterprises, Inc. on August 21, 1992. *No* action was taken on any of these petitions until the Petitions for Reconsideration were withdrawn two years later.[10]

On November 6, 1992, the Commission issued a *Notice of Proposed Rule Making* proposing a new Part 88 which would replace and simplify Part 90. [11] Although the *Notice* proposed to replace and simplify Part 90, consideration of the wireline ineligibility rule was postponed to a future rulemaking, not therein noticed. [12] Because the *Notice* effectively proposed to rewrite Part 90, however, BellSouth opposed continuation of the wireline ineligibility rule and restated its position that there was no lawful

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7 *First NPRM*, 51 Fed. Reg. at 2911.

8 *See Eligibility for the Specialized Mobile Radio Services*, PR Docket No. 86-3, *Order*, 7 FCC Rcd. 4398, 4399 (1992) ("*Termination Order*").

9 *BellSouth Corp. v. FCC*, No. 92-1334 (D.C. Cir. filed Aug. 31, 1992).

10 Southwestern Bell and Bell Atlantic withdrew their petitions for reconsideration on August 3 and 4, 1994.

11 *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, PR Docket No. 92-235, *Notice of Proposed Rule Making*, 7 FCC Rcd. 8105 (1992).

12 *Id.*, Appendix A, 7 FCC Rcd. at 8121.

basis for adoption of the wireline ineligibility rule. [13]

Another *Notice of Proposed Rule Making* which proposed to facilitate the development of wide-area SMR systems was released on June 9, 1993. [14] Many parties, including BellSouth, again urged the Commission to eliminate the wireline ineligibility rule. [15] It was observed that "contrary to statute and the most basic principles of administrative law, the wireline restriction was imposed and remains in place without the required public interest determination even being discussed, much less made." [16] The Commission was urged to "immediately act on the long-pending petitions for reconsideration in PR Docket 86-3 and either repeal or modify Section 90.603(c), as it originally proposed." [17] A decision has not been rendered in this proceeding.

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13 *See* Comments of BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp., PR Docket 92-235, filed May 28, 1993 at 5-6.

14 *Amendment of the Commission's Rules to Facilitate Future Development of SMR Systems*, PR Docket No. 93-144, *Notice of Proposed Rule Making*, 8 FCC Rcd. 3950 (1993).

15 *See* Comments of BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp., PR Docket No. 93-144, filed July 19, 1993, at 5-12; Comments of GTE Service Corporation, PR Docket No. 93-144, filed July 19, 1993, at 1; Comments of Southwestern Bell Corporation, PR Docket No. 93-144, filed July 19, 1993, at 4-12; Comments of Bell Atlantic Enterprises International, Inc., PR Docket No. 93-144, filed July 19, 1993, at 1-4.

16 Comments of Southwestern Bell Corporation, PR Docket No. 93-144, at 6.

17 *See* Comments of Bell Atlantic Enterprises International, Inc., PR Docket 93-144, at 4; *see also* Comments of BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp., PR Docket 93-144, at 5.

On September 23, 1993, the Commission proposed to implement the Omnibus Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392-97 (1993), which amended Sections 3(n) and 332 of the Communications Act. [18] Despite the Congressional mandate to create regulatory parity within one year[19] and despite receiving comments on implementation of the Budget Act and elimination of the wireline eligibility restriction, the Commission stated that the record still was not sufficient to determine whether the restriction should be removed. [20] Accordingly, the Commission indicated that it would address the wireline ineligibility issue in a later, unspecified rulemaking. [21]

After postponing decision on the wireline eligibility restriction yet again, the Commission sought comment on six long-pending requests for waivers of the wireline ineligibility rule. [22] Twenty parties commented in this proceeding. Twelve parties supported the waiver requests and, significantly, SMR trade associations and licensees supported the waiver requests. [23] No action has been taken on these waiver

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18 *See Implementation of Sections 3(n) and 332 of the Communications Act,* GEN Docket No. 93-252, *Notice of Proposed Rule Making*, 8 FCC Rcd. 7988 (1993)("*Regulatory Parity NPRM*").

19 *See* Budget Act, *supra*, § 6001(d).

20 *Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1455 (1994).

21 *Id.*

22 FCC Public Notice, DA 94-329, released April 12, 1994.

23 *See* NABER Comments at 4; AMTA Comments at 6; Geotek Comments at 1. In addition, Dial Page, Inc., American Paging, Inc., Spectrum Resources, Inc., Pacific Bell and Nevada Bell, Chariton Valley Telephone Corporation, Community Services Telephone Company, National Telephone Cooperative Association,

requests, however, despite the Commission's acknowledgement that the rule no longer serves a useful purpose and the Commission's policy of granting waivers of the rule conditioned on the outcome of a rulemaking proposing to eliminate the rule. [24]

On August 11, 1994, the Commission finally released a new Notice of Proposed Rulemaking ("*Second NPRM*") proposing elimination of the wireline restriction.[25] Ironically, as in the original 1986 proceeding to eliminate the rule, the Commission again states that the restriction should be eliminated because it "no longer serves a useful purpose"[26] and that elimination of the restriction may actually increase competition.[27] Despite eight years of inaction, requests for the expeditious elimination of the restriction, and its acknowledgement that the rule no longer serves a valid purpose,[28] the Commission extended the timetable for action in this proceeding.[29]

Poka-Lambro Telephone Cooperative, Inc., and United Telephone Mutual Aid Corp. submitted comments supporting grant of the waivers.

24 Conditional waivers were granted to Pacific Telesis, Inc., Advanced Paging Services, Inc., US West Paging, Inc., Southwestern Bell, and Bell Atlantic Enterprises International, Inc. *See Termination Order*, 7 FCC Rcd. at 4399 & n.13; *see also James F. Rill,* 60 Rad. Reg. 2d (P&F) 583, 602-03 (1986); Letter from Chief, Land Mobile and Microwave Division, to F. Thomas Moran, dated February 8, 1988.

25 *Second NPRM*, GN Docket No. 94-90 (Aug.11, 1994).

26 *Compare Second NPRM* at ¶ 15 *with First NPRM*, 51 Fed. Reg. at 2910.

27 *Compare Second NPRM* at ¶ 16 *with First NPRM*, 51 Fed. Reg. at 2911.

28 FCC Motion for Remand, *BellSouth Corporation v. FCC,* Case No. 92-1334, filed September 14, 1994, at 2 ("FCC Motion"); *Second NPRM* at ¶ 15; *First NPRM*, 51 Fed. Reg. at 2910.

29 *See Order*, GN Docket No. 94-90, DA 94-1012, released September 16, 1994.

On September 14, 1994, the Commission moved for a remand of the *Termination Order* appeal based on the assertion that it is "no longer persuaded 'that the wireline limitation serves a useful purpose'."[30] Less than two weeks later, the Commission released its *Third Report and Order* in GN Docket No. 93-252 which found that SMR services were substantially similar to other wireless services, all of which should be subject to similar regulatory treatment. [31] Again, despite addressing licensing rules, receiving comments urging the immediate elimination wireline prohibition, and the requirement to create regulatory parity within one year, the Commission deferred consideration of the wireline eligibility issue.

It is within this historical context that BellSouth submits comments urging the elimination of the wireline prohibition.

DISCUSSION

I. The Restrictions on the Ability of Wireline Telephone Common Carriers from Holding SMR Licenses Should be Eliminated.

Consistent with its comments submitted in response to the *First NPRM* and virtually all subsequent SMR rulemakings,[32] BellSouth believes that there is no

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30 FCC Motion at 2.

31 *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket 93-252, *Third Report and Order*, FCC 94-212, released September 23, 1994, at ¶¶ 12-13 ("*Third Report*").

32 *See, e.g.*, Comments of BellSouth, PR Docket 92-235, at 5-6; Comments of BellSouth, PR Docket 93-144, at 5-12.

rational basis for the wireline restriction and that the restriction should be eliminated without delay.

A. No Valid Basis for the Wireline Ineligibility Rule Remains.

The Commission has intimated that, whatever the original basis for the rule, it no longer exists.[33] Nevertheless, the Commission decided in 1992 that the rule should be retained for competitive reasons. [34] In the *Second NPRM*, however, the Commission tentatively concludes that "there is no longer a need for the SMR wireline ban or the commercial 220 MHz wireline restriction in today's competitive mobile service marketplace."[35] The Commission further acknowledges that the restriction "no longer serve[s] a useful purpose"[36] and wireline entry into SMR "has the potential to increase competition rather than impede it."[37]

The Commission also indicates that the basis for retaining the restriction in 1992 has been eliminated [38] by the Budget Act. In the *Termination Order*, the restriction was retained "to evaluate fully the competitive potential of private land mobile

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33 *See First NPRM*, 51 Fed. Reg. at 2910; *Termination Order*, 7 FCC Rcd. at 4398.

34 *Termination Order*, 7 FCC Rcd. at 4399. The Commission relied on an internal report by D. Fertig which was never subject to notice and comment. *See id.* at 4399 n.11.

35 *Second NPRM* at ¶ 16; *see also* FCC Motion For Remand, *BellSouth Corporation v. FCC*, Case No. 92-1334, filed September 14, 1994, at 2.

36 *Second NPRM* at ¶ 15.

37 *Id.* at ¶ 16.

38 *See id.* at ¶ 13.

services vis-a-vis common carrier land mobile providers [and] to preserve a climate favorable to the continued development of private land mobile competitors."[39] As required by the Budget Act, however, the Commission recently amended its rules to ensure that similar services are accorded similar regulatory treatment.[40] In this regard, the Commission has eliminated the dichotomy between SMR services and common carrier services by determining that most SMR services shall be regulated as CMRS and treated as common carriers. [41] Accordingly, the restriction no longer applies to private land mobile systems only and no longer promotes the development of private land mobile competitors.

In addition, as BellSouth has previously indicated, the absence of vacant channels in major markets makes assignments and transfers of SMR licenses the primary vehicle for new entrants, such as wirelines, to enter the SMR industry.[42] The Commission retains the authority to disapprove of transfer and assignment applications, if grant of such applications would disserve the public interest by harming competition. Thus, there is no need for the restriction.

The other vehicle for wireline entry into the SMR industry is the auction process. While there are few vacant channels in major markets, the Commission has

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39 *Termination Order*, 7 FCC Rcd. at 4399.

40 *Second Report*, 9 FCC Rcd. at 1418 (quoting H.R. Rep. 103-213, 103d Cong., 1st Sess. 494 (1993) ("Conference Report")).

41 *Id.* at 1450-51.

42 Comments of BellSouth, PR Docket No. 93-144.

recently announced its intention to proceed with 900 MHz Phase II SMR licensing.[43] The Commission has also indicated that it is opening the application process for 800 MHz SMR licenses to any qualified applicant.[44] For both services, the Commission indicated that, at least to some extent, competitive bidding will be used to award these licenses to "applicants who place the highest value on the available spectrum."[45] Excluding wirelines from this process will skew the auction process such that licenses are not awarded to those who value it most. Moreover, failure to eliminate the restriction prior to conducting these auctions will exclude wirelines from the last opportunity, outside of the transfer process, to obtain valuable SMR spectrum on these frequencies.

B. Regulatory Parity Requires That The Wireline Ineligibility Rule Be Eliminated.

Pursuant to the Budget Act, the Commission is obligated to ensure that similar services are accorded similar regulatory treatment.[46] Additionally, the Commission must ensure that "unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers."[47] The Commission's role is to

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43 *Third Report* at ¶ 337.

44 *Id.* at ¶ 341.

45 *Id.* at ¶ 337.

46 *Second Report*, 9 FCC Rcd. at 1418.

47 *Id.*

ensure "a regulatory regime [in which] the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services."[48]

In this regard, the Commission has determined that services which "compete, or have reasonable potential, broadly defined, to compete, in meeting the needs and demands of consumers" shall be deemed similar services subject to regulatory parity.[49] The Commission has concluded that all CMRS services, including SMR services, are competitive[50] and that SMR services compete with cellular and are likely to compete with PCS.[51] Accordingly, in order to comply with regulatory parity, SMR regulations must be substantially similar to other CMRS regulations.[52]

Based on the foregoing, the wireline restriction must be eliminated. The restriction forms a barrier to entry into the SMR service; a barrier which does not exist for like services such as PCS and cellular. SMR licensees are free to acquire any wireless license without any restrictions, other than the spectrum cap applicable to all CMRS providers generally. Regulatory parity requires that all SMR competitors, including wirelines, be able to acquire any wireless license also. Failure to allow wirelines to acquire SMR licenses will result in similar services subject to inconsistent

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48 *Third Report* at ¶ 23.

49 *Id.* at ¶ 24 (footnote omitted).

50 *Second Report*, 9 FCC Rcd. at 1467; *Third Report* at ¶ 43.

51 *Third Report* at ¶¶ 58, 67 & n.118, 72 & n.134; *Regulatory Parity NPRM*, 8 FCC Rcd. at 8000 (citing *New Personal Communications Services*, GEN Docket No. 90-314, *Notice of Proposed Rule Making and Tentative Decision*, 7 FCC Rcd. 5676, 5712 (1992)).

52 *See* Budget Act, supra text accompanying note 18.

licensing schemes in violation of regulatory parity. Moreover, certain investment into SMR is prevented by the restriction and, therefore, the regulatory arena is shaping SMR development. Elimination of the wireline restriction, however, will allow equal opportunities for investment in all similar CMRS services and will remove a regulatory impediment to the continued development of these services collectively.

C. A Decision on Elimination of the Wireline Restriction is Needed Expeditiously to Allow the Industry to Develop Fully.

BellSouth supports the Commission's determination that "wireline carrier participation in mobile services [such as SMR], including participation by the post-divestiture Bell Operating Companies (BOCs), has the potential to increase competition rather than impede it."[53] Some of the most innovative and competitive developments in the SMR industry to date have been brought about by new entrants. Allowing wireline telephone common carriers to enter the SMR marketplace is likely to spur additional development in the SMR industry.

Companies such as Motorola and IBM have been allowed to enter and exit the SMR marketplace without restriction. Competitors of these giants, however, have been unable to rely on the full expertise of wireline carriers in their efforts to remain competitive. According to these competitors, "the scale and scope of wireless data ventures being planned and implemented[] are such that the pooling of financial,

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[53] *Second NPRM* at ¶ 16. *See also* Response of the Federal Communications Commission to Motion For Establishment of Briefing Schedule, Case No. 92-1334, filed August 31, 1994 at 2; FCC Motion at 2.

technical, and marketing resources is absolutely necessary for survival."[54] Preventing full wireline participation in the SMR industry thus stymies competition by drying up a potential resource to SMR operators in need of resources for survival.

RAM Mobile Data USA Limited Partnership ("RAM Mobile Data"), for example, an innovator in developing dedicated two-way mobile data communications networks,[55] competes with ARDIS in the provision of this service. While ARDIS enjoys unfettered access to the resources of its parent company, Motorola, RAM Mobile Data cannot rely on the full investment potential and expertise of its partner, BellSouth, to the same extent. Without additional investment from BellSouth, RAM Mobile Data may have difficulty competing with ARDIS and the resources of Motorola and, until recently, IBM.[56]

Wirelines such as BellSouth are likely to limit their investment in SMR companies, however, because they are precluded from obtaining control.[57] At some point, it does not make financial sense for a wireline to invest additional money in an SMR licensee without obtaining some aspect of control to protect its investment. Thus, the wireline restriction, and not the marketplace, may shape the future development of

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54 Comments of RAM Mobile Data USA Limited Partnership, DA 94-329, filed May 20, 1994, Apicella Affidavit at 7 ("RAM Comments).

55 RAM Comments at 5, Apicella Affidavit at 1; *see also American Mobile Communications, Inc.*, 4 FCC Rcd. 3802, 3805 (1989).

56 Until recently, IBM and Motorola were both parent companies of ARDIS. *See Motorola to Buy IBM's Share in ARDIS*, Mobile Data Report, July 18, 1994.

57 *See* Letter from Chief, Private Radio Bureau, to Henry Goldberg, dated July 1, 1991; *see also Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Further Notice of Proposed Rule Making*, 9 FCC Rcd. 2863, n.169 (1994).

RAM Mobile Data and the SMR industry in general. This is not what the Commission wanted to create.[58]

Given the competitive nature of SMR service and the need for additional funding to drive innovation, the Commission should eliminate the wireline restriction expeditiously. The Commission has conducted more than ten rulemakings in which the wireline restriction could have been eliminated.[59] BellSouth submitted comments urging the elimination of the restriction in many of these proceedings. The restriction remained in place however.

To prevent the current proceeding from becoming stale, as the Commission claimed happened in 1986, and ensure that the validity of the restriction is finally addressed after notice and comment, the Commission should conclude this proceeding without delay. Further, given the delay associated with addressing the restriction and the Commission's acknowledgement that the basis for the rule no longer exists, BellSouth urges the Commission to conclude this proceeding without delay.

II. All Commercial Mobile Radio Service Providers Should be Eligible to Provide Dispatch Service.

BellSouth supports the Commission's tentative conclusion that the common carrier dispatch prohibition should be eliminated.[60] Pursuant to the Budget Act, many private carriers currently providing dispatch service will be characterized as CMRS providers and will be permitted to continue providing dispatch service under the new

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58 *See Third Report* at ¶ 23.

59 *See* discussion *supra* at pp. 3-8.

60 *Second NPRM* at ¶¶ 1, 30.

regulatory scheme. [61] Given the goal of promoting regulatory parity and the express authority given to the Commission to eliminate the prohibition, the Commission should eliminate the prohibition in this proceeding without delay so that all CMRS providers can begin providing dispatch service immediately. Failure to eliminate the prohibition would run afoul of the regulatory parity mandate -- similarly situated licensees would not be able to provide the same types of services.

Elimination of the dispatch prohibition will clearly benefit customers by increasing competition for their business. The entry of common carriers previously excluded from the provision of dispatch service will promote significant economies of scale. SMR, cellular, and PCS licensees will be able to create economies of scope between their existing service offerings and the provision of dispatch service. It will allow carriers to better customize their service offerings to meet customer needs. A carrier with the ability to provide dispatch service should not be forced to forgo a business opportunity because of a regulatory restriction which, as the Commission has already recognized, creates a marketplace distortion.[62] Accordingly, elimination of the prohibition would serve the public interest.

CONCLUSION

As indicated above, elimination of the wireline ineligibility rules and dispatch prohibition (1) is required by the Budget Act which mandates regulatory parity, and (2) would enhance competition in both the SMR and dispatch marketplaces.

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61 47 U.S.C. § 332(c).

62 *Third Report* at n. 15.

Elimination of the ineligibility rules is also warranted because no basis for the restriction remains. Accordingly, BellSouth urges the Commission to eliminate the ineligibility rules and dispatch prohibition without delay.

Respectfully submitted,

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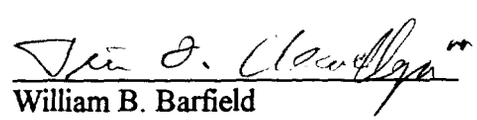
By: 

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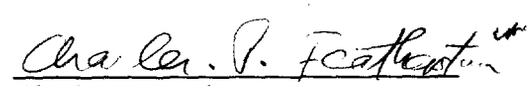

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